

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

\*\*\*\*\*  
John Anthony Castro, \*  
\*  
Plaintiff, \*  
v. \* Civil No. 1:23-cv-00416-JL  
\*  
Secretary of State David M. Scanlan, et al, \*  
\*  
Defendants. \*  
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**SECRETARY OF STATE’S RESPONSE TO  
PLAINTIFF’S OBJECTION TO MR. TRUMP’S MOTION TO DISMISS**

The Defendant, New Hampshire Secretary of State David M. Scanlan (the “Secretary of State”), through his counsel, the New Hampshire Office of the Attorney General, submits this brief response to Plaintiff’s “Response in Opposition to Defendant Secretary of State’s Motion to Dismiss,” ECF 32.

I. Plaintiff’s objection mischaracterizes Mr. Trump’s motion to dismiss as being the Secretary of State’s motion to dismiss.

1. On September 29, 2023, defendant Donald Trump moved to dismiss the Plaintiff’s complaint for lack of subject matter jurisdiction. See ECF 31.
2. On September 29, 2023, the Plaintiff filed an objection to ECF 31, which the Plaintiff titled “Response in Opposition to Defendant Secretary of State’s Motion to Dismiss.” See ECF 32.
3. In his objection, the Plaintiff responds to the arguments that Mr. Trump made and the authorities that Mr. Trump cited in his motion to dismiss. See ECF 32. However, the Plaintiff repeatedly and incorrectly attributes Mr. Trump’s arguments and authorities to the Secretary of State. For example, the Plaintiff stated “Defendant Secretary of State cites Berg v. Obama,”

despite the Secretary of State not having filed any pleading that cites that case. Compare ECF 32, at 2, with ECF 31, at 3 (Mr. Trump citing Berg v. Obama), and ECF 27 (Secretary of State's objection to the Plaintiff's request for injunctive relief, which does not cite Berg v. Obama).

4. Therefore, the Secretary of State submits this brief response to clarify that the Plaintiff's objection responds to Mr. Trump's motion to dismiss—not any filing by the Secretary of State—and mischaracterizes Mr. Trump's arguments as being the Secretary of State's arguments.

II. The Plaintiff cannot assert a new request for relief in his objection to Mr. Trump's motion to dismiss.

5. In his objection to Mr. Trump's motion to dismiss, the Plaintiff argues for the first time that he would be injured by the Secretary of State "counting Defendant Donald John Trump's votes whether write-in or not." ECF 31, at 1.

6. However, the Plaintiff's complaint neither alleges that he will be injured by the Secretary of State "counting" votes for Mr. Trump nor requests injunctive relief to prohibit the Secretary of State from doing so. See ECF 1, ¶¶16-17. Similarly, the Plaintiff's request for a temporary restraining order neither alleges that he will be injured by the Secretary of State "counting" votes for Mr. Trump nor requests injunctive relief to prohibit the Secretary of State from doing so. See ECF 6, at 8-9.

7. The Plaintiff did not allege this new injury or request this new relief in his complaint or request for an injunction, and he cannot belatedly assert this new injury and request this new relief after the parties have filed their objections to the Plaintiff's request for injunctive relief.

8. Furthermore, the Secretary of State would be prejudiced if the Court allows the Plaintiff to belatedly assert this new injury and request this new relief because the Secretary of State would not have had an opportunity to fully brief the merits of this new issue. This is particularly important because the Plaintiff's requested relief—an order prohibiting the Secretary of State

from “counting” votes on lawfully cast ballots—implicates New Hampshire voters’ constitutional right to vote and potential separation of powers issues.

Respectfully submitted,

Secretary of State David M. Scanlan

By his attorney,

THE OFFICE OF THE ATTORNEY GENERAL

Dated: October 3, 2023

/s/ Brendan A. O’Donnell

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by ECF on October 3, 2023, to all parties of record.

/s/ Brendan A. O’Donnell

Brendan A. O’Donnell